

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No. 12810
<b>Yvette Gonzales, Trustee for RealRadio, LLC,</b>	)	NAL/Acct. No. MB200641410052
<b>Debtor</b>	)	FRN: 0003747417
	)	File No. BR-20050930ARK
Former Licensee of Station KRSN(AM)	)	
Los Alamos, New Mexico	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 15, 2009**

**Released: May 18, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“Order”), we cancel a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500), against RealRadio, LLC (“RealRadio”), former licensee of Station KRSN(AM), Los Alamos, New Mexico (“Station”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. RealRadio’s renewal application for the Station’s license term was due on June 1, 2005, four months prior to the October 1, 2005, expiration date.<sup>2</sup> RealRadio did not file the application until September 30, 2005. In the application, RealRadio explained that, on or about July 7, 2005, RealRadio filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of New Mexico, and that Yvette Gonzales was appointed to serve as a Chapter 7 trustee (“Trustee”). It further explained that, along with the renewal application, it had simultaneously filed an application for involuntary assignment of the Station to Trustee, as well as a request for Special Temporary Authority (“STA”) for the Station to remain silent.<sup>3</sup>

3. On June 8, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred thousand dollars (\$1,500) to RealRadio for its

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>3</sup> See File Nos. BAL-20050930AHK (granted Oct. 11, 2005) and BLSTA-20050928AHB (granted Sept. 29, 2005). The Station transmitter was disassembled and Trustee restored operation of the Station on June 29, 2006. The Station is currently operating at a temporary location pursuant to STA while the current licensee continues to search for a permanent transmitter site. See BSTA-20060320AHM (as extended by -20060919AFJ and -20080131ATE). A further extension of the STA remains pending. See BESTA-20090206AAT.

violation of Section 73.3539 of the Rules.<sup>4</sup> Trustee filed a Request for Cancellation of Proposed Forfeiture (“Request”) on June 23, 2006.<sup>5</sup> In support of its Request, Trustee states that the Station remains in bankruptcy and is currently silent.<sup>6</sup> It claims that the former licensee, RealRadio, is no longer associated with the Station, and that to impose a forfeiture would only harm innocent creditors of the bankrupt former licensee. Trustee asserts these reasons warrant a cancellation of the assessed forfeiture.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>9</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>10</sup>

5. The Commission has generally given considerable weight to a respondent’s bankrupt status in determining whether a rescission of a forfeiture is warranted.<sup>11</sup> Given the bankrupt status of RealRadio, we believe that it is appropriate to rescind the forfeiture against it. The appointment of the Chapter 7 Trustee removes RealRadio from any involvement in the dissolution of business operations or the distribution of RealRadio’s assets.<sup>12</sup> We agree with Trustee’s contention that payment of the forfeiture under these circumstances would diminish the amount available to RealRadio’s innocent creditors and would otherwise serve no public interest purpose.<sup>13</sup>

6. We have considered Trustee’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that RealRadio willfully<sup>14</sup> and repeatedly<sup>15</sup>

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<sup>4</sup> We note that, because Real Radio was no longer the licensee when we acted on the renewal application, we should in fact have issued the NAL to Trustee.

<sup>5</sup> The Station was assigned to an unrelated third party, Gillian Sutton, on June 30, 2006. See File No. BAL-20060207ABN. The assignment was consummated on July 22, 2006.

<sup>6</sup> As discussed at note 3, *supra*, the Station is currently operating at temporary facilities pursuant to STA. This argument, therefore, requires no further discussion.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> See *Dennis Elam*, Memorandum Opinion and Order, 11 FCC Rcd 1137 (1996) (“*Elam*”); see also *Mallard Cablevision, LLC*, Memorandum Opinion and Order, 20 FCC Rcd 5143 (EB 2005) (“*Mallard*”); *Interstate Savings, Inc. d/b/a/ ISI Telecommunications*, Memorandum Opinion and Order, 12 FCC Rcd 2934 (CCB 1997) (“*Interstate Savings*”).

<sup>12</sup> See *Elam*, 11 FCC Rcd at 1137 (noting that the violator was no longer associated with the station); *Mallard*, 20 FCC Rcd at 5145 (noting that bankrupt entity no longer retained control over its assets); *Interstate Savings*, 12 FCC Rcd at 2936 (noting that the appointment of a Chapter 7 trustee removed the former licensee from any involvement in the dissolution of business operations and the distribution of assets).

<sup>13</sup> See *Elam*, 11 FCC Rcd at 1137 (noting that imposition of forfeiture would serve no public interest purpose); *Interstate Savings*, 12 FCC Rcd at 2936 (same).

<sup>14</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern* (continued....)

violated Section 73.3539 of the Rules. However, we find cancellation of the proposed forfeiture is warranted in light of RealRadio's Chapter 7 bankrupt status.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>16</sup> that the proposed forfeiture in the amount of one thousand five hundred dollars (\$1,500) issued to RealRadio, LLC, for willfully and repeatedly violating Section 73.3539 of the Commission's Rules IS CANCELLED.

8. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to: Yvette Gonzales, Trustee, P.O. Box 1037, Placitas, New Mexico 87043, and to her counsel, Dawn M. Sciarrino, Esq., Sciarrino & Associates, PLLC, 5425 Tree Line Drive, Centreville, Virginia 20120.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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*California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>15</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.